



STATE OF MICHIGAN  
DEPARTMENT OF EDUCATION  
LANSING

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**FISCAL YEAR 2015  
CHILD AND ADULT CARE FOOD PROGRAM  
OPERATIONAL MEMORANDUM #38**

**TO:** Child and Adult Care Food Program Institutions

**FROM:** Marla J. Moss, Director  
Office of School Support Services

**DATE:** September 30, 2015

**SUBJECT: Serious Deficiency Process for Sponsors of Unaffiliated Centers**

This memorandum provides guidance and instruction on the implementation of the Serious Deficiency (SD) process for sponsors of unaffiliated centers operating the Child and Adult Care Food Program (CACFP). An unaffiliated center is legally distinct from the sponsoring organization. For more information, see Operational Memo #37 of Fiscal Year (FY) 2015.

Included with this memorandum are the following document templates:

- The Serious Deficiency Flow Chart for Sponsors of unaffiliated centers and Family Day Care Home (FDCH) Sponsors.
- Prototype letters (A through K) that must be used during the SD process.
- Sample Appeal Procedures.
- Other sample appeal documents.

Failure by a sponsor of unaffiliated sites to take proper action against a site that has committed one or more serious deficiencies will result in Michigan Department of Education (MDE) taking action against the sponsor.

**Serious Deficiency Determination**

A SD Notice must be issued for any SD finding(s).

List of SD(s):

- a. Submission of false information on the application to the sponsor, including but not limited to a determination that the center has concealed a conviction for any activity that occurred during the past seven years which would indicate a lack of business integrity. A lack of business integrity includes fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity as defined by MDE.

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- b. Permitting an individual who is on the National Disqualified List (NDL) to serve in a principal capacity with the center.
- c. Failure to operate the program in conformance with the Federal performance standards.
- d. Failure to comply with the bid procedures and contract requirements of applicable federal procurement regulations.
- e. Failure to maintain adequate records. A frequent finding at monitoring visits is missing records such as menus, meal attendance, and daily attendance. On a first offense for missing records, if a center is behind with recordkeeping for less than six days, this does not constitute a SD finding. Training must be completed with the center and documented and written corrective action must be submitted by the center if findings do not rise to the level of SD. If a center is missing six days or more of records, the sponsor shall immediately issue a SD notice.
- f. Failure to adjust meal orders to conform to variations in the number of participants.
- g. Submitting a request for reimbursement for meals not served to participants.
- h. Submitting a request for reimbursement for a significant number of meals that do not meet program requirements.
- i. Use of a food service management company that is in violation of health codes.
- j. Submitting a request for reimbursement for meals served as a proprietary (for profit) center during a calendar month in which less than 25 percent of its enrolled participants, or 25 percent of its licensed capacity, whichever is less, were Title XX beneficiaries or eligible for free or reduced price meals.
- k. Failure to perform any of the other financial and administrative responsibilities required by Federal regulation.
- l. The fact the institution or any of the center's principals have been declared ineligible for any other publicly funded program by reason of violating that program's requirements. However, this prohibition does not apply if the institution or the principal has been fully reinstated in, or is now eligible to participate in, that program including the payment of any debts owed.
- m. Conviction of the center or any of its principals for any activity that occurred during the past seven years and that indicates a lack of business integrity.
- n. Any other action affecting the center's ability to administer the program in accordance with program requirements.
- o. Any other circumstance related to non-performance under the sponsoring organization's permanent agreement, as specified by MDE or the sponsor.

If the sponsor of unaffiliated centers determines that a participating unaffiliated center has committed one or more of the listed SD(s), or receives notification forwarded by MDE from the Child Care Licensing Division of Intent to Revoke License, Intent not to Renew License or a Summary Suspension, or related notices, action must be initiated to terminate the agreement of the participating center and to disqualify the center and any responsible principals and responsible individuals (RP/Is) by starting the SD process.

During a monitoring visit in which the sponsoring organization identifies SD findings, the sponsor must document the finding(s) in their monitoring report. The center's RP/Is, if available, must sign the monitoring report as acknowledgement that the finding(s) have been explained to the center.

## **Serious Deficiency Notice**

Once the sponsor determines the center is seriously deficient, the sponsor must issue a timely Serious Deficiency Notice (Letter A) to the center. The notice must be sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile or by e-mail address **and** regular mail, and must describe the action proposed or taken by a sponsoring organization with regard to a center's participation. The notice is considered received five days after being sent. If the notice is undeliverable, it is considered received five days after being sent to the addressee's last known mailing address, facsimile number, or e-mail address. A copy of the SD notice must also be sent to the Michigan Department of Education (MDE). The notice must do all of the following:

- Clearly describe the SD finding(s).
- State the legal basis for each SD finding [cite the SD regulation(s) as well as specific provisions in the permanent agreement and/or regulations that support the SD finding(s)].
- Inform the center that voluntary termination from the CACFP will result in proposed disqualification of the center.
- Specify the corrective action(s) to be taken and the time allotted to correct the SD finding(s). Corrective action(s) must be taken as soon as possible, but not to exceed 30 days.
- State that failure to fully and permanently correct each SD finding will result in the proposed termination of the center's CACFP agreement with the sponsor and the proposed disqualification of the center and the RP/Is.
- Notify the center that there are no appeal rights of the SD determination.
- Inform the center that program payments will be made during the corrective action period, unless one of the findings is an imminent threat to health and safety of children, at which time the suspension process must be followed.

## **Sponsor's Requirement to Hear Provider Appeals**

Michigan Department of Education (MDE) has delegated the responsibility to hear unaffiliated center administrative reviews (appeals) to sponsors per 7CFR 226.6(l). The sponsor must select and train administrative review officials. Officials must be trained at least annually on program requirements and provided copies of CACFP regulations, guidance, and applicable handbooks. MDE will review documentation of training of administrative review officials during on-site reviews.

*Administrative review official.* The administrative review official must be independent and impartial. This means that, although the administrative review official may be an employee or board member of the sponsoring organization, he/she must not have been involved in the action that is the subject of the administrative review or have a direct personal or financial interest in the outcome of the administrative review.

*Basis for decision.* The administrative review official must make a determination based on the information provided by the sponsoring organization and the unaffiliated center and on federal and state laws, regulations, policies, and procedures governing the program.

*Time for issuing a decision.* The administrative review official must inform the sponsoring organization and the unaffiliated center of the administrative review's outcome within 75 calendar days of the receipt of the request for appeal. This timeframe is an administrative requirement for the sponsoring organization and may not be used as a basis for overturning the termination if a decision is not made within the specified timeframe.

*Final decision.* The determination made by the administrative review official is the final administrative determination to be afforded the unaffiliated center. Once the sponsor has received the final determination, the sponsor must inform the unaffiliated center in writing of the outcome of the administrative review and provide a copy of the decision.

MDE will not intervene once a center has been terminated and the center/RPIs have been disqualified unless evidence suggests that the sponsor or hearing official did not follow proper regulatory procedures.

Prototype templates for correspondence related to the appeal process are attached (appeal procedures, etc.).

### **Corrective Action**

A sponsor may allow the center a maximum of 30 calendar days to submit a Corrective Action Plan (CAP). However, in most situations, centers will be able to implement permanent corrective action in less time. Sponsors can choose to include a copy of *Serious Deficiency-CAP Guidelines* with their corrective action letter.

If the center corrects the SD finding(s) within the allotted time and to the sponsor's satisfaction, the sponsor must send a notice accepting corrective action, Notice of Temporary Deferral of Serious Deficiency (Letter B), to the center. The notice must be sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile or by e-mail address **and** regular mail. It is not regulatory to send the notice by regular mail as well as certified mail, but it is a best practice that MDE highly recommends. If the notice is undeliverable, it is considered received five calendar days after being sent to the addressee's last known mailing address, facsimile number or e-mail address. A copy of the Notice of Temporary Deferral of Serious Deficiency (Letter B) must also be sent to MDE and must inform the center all of the following:

- Corrective action(s) must be permanent.
- If corrective action(s) is/are not permanently corrected, the sponsor will immediately propose termination and disqualification of the center.
- If it is found in any subsequent review that any of these SD(s) have not been fully and permanently corrected, the sponsor will immediately propose to terminate and propose to disqualify without any further opportunity for corrective action.

### **Permanent Corrective Action**

Defining permanent corrective action depends on a number of factors, including the nature of the original problem, the amount of time that has elapsed between the accepted corrective action and the next review, changes in the institution's personnel, and the availability of records documenting the original noncompliance.

It is reasonable for a sponsor to decide that too much time has elapsed to simply reinstate the proposed termination, in which case it would restart the process by issuing a new notice of serious deficiency [USDA Handbook on *Serious Deficiencies, Suspensions and Appeals for State Agencies and Sponsoring Organizations*, February, 2015].

However, this policy was not intended to allow sponsors to issue a new notice of serious deficiency simply because there has been a time lapse or because there has been staff turnover; the center must have procedures in place that will train and support successful operations over time and regardless of staffing changes.

## Repeat Serious Deficiency Findings

As a guide to assist in determining when to declare a serious deficiency if repeat findings occur, MDE utilizes the following rules:

- 30 months or 8 monitoring visits must pass with no reoccurrence of the SD findings. If at any time during 30 months or 8 monitoring visits the same SD findings reoccur, it would be considered a repeat finding and the sponsor would immediately issue a notice of Proposal to Terminate and Proposal to Disqualify (PTPD) the center and RP/Is (Letter C).
- After 30 months or 8 monitoring visits, if the same SD findings reoccur, a new SD would have to be declared.

The repeat SD should typically be at least the same level of severity as the original SD (i.e., at least 6 or more days of missing paperwork).

However, there is still room for independent sponsor discretion, if the file is documented properly. Consider if a center was originally declared SD for six or more days of missing paperwork, and at six additional follow up monitoring visits, the center had missing paperwork of 4-5 days. In this case, in spite of continued documented technical assistance from the sponsor, the center continued to show a pattern of non-compliance, that while not at the same level of severity, was persistent and on-going and would warrant a repeat findings determination. Contact MDE for guidance in unusual situations.

## Proposed Termination and Proposed Disqualification of Agreement

If a center fails to permanently correct the serious deficiency(ies) in the time allotted for corrective action **or any time after the original SD notice had been temporarily deferred**, the sponsor must issue a Notice of Proposed Termination and Proposed Disqualification (Letter C or Letter D) to the center. The notice must be sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile or by e-mail address **and** regular mail, and must describe the action proposed or taken by a sponsoring organization with regard to a center's participation. The notice is considered received five days after being sent. If the notice is undeliverable, it is considered received five days after being sent to the addressee's last known mailing address, facsimile number, or e-mail address. A copy of the SD notice must also be sent to MDE.

The notice must:

- Reference the SD notice and findings and state why corrective action was not acceptable (or state that the center failed to submit a CAP within the time allotted or that the SDs have not been fully and permanently corrected and list them).
- Offer the center the opportunity to appeal the PTPD, and provide appeal procedures.
- Notify the center that the termination of the center's CACFP agreement will result in termination for cause and disqualification of the center and the RP/Is from the CACFP.
- Notify the center that voluntary termination of the CACFP agreement after the receipt of the PTPD notice will result in the center and the RP/Is being placed on the National Disqualified List (NDL).

- Notify the center that they may continue to participate in the CACFP through the appeal deadline or, if an administrative review is requested, until the hearing officer issues a decision.

### **Program Payments**

The sponsor must continue to pay the valid portion of any claims until the SD(s) is/are corrected or the agreement is terminated, including the period of an appeal, unless the center is suspended. No payments are made during suspension. As always, the sponsor must deny invalid claims.

### **Suspension – Imminent Threat to Health and Safety**

If a center is cited for a serious health or safety violation by state or local health officials, or by a licensing official, the sponsor must immediately suspend the center's CACFP participation, even before any formal action has been taken to revoke the center's license. If the sponsor determines that there is imminent threat to the health or safety of participants in the center, or the center engages in activities that threaten public health or safety, the sponsor must immediately notify state or local licensing officials. For all imminent threat to health and safety issues, the sponsor must issue the Combined Notice of Serious Deficiency, Suspension, Proposed Termination, and Proposed Disqualification Notice: Imminent Threat to Health or Safety notice (Letter H), including appeal procedures, to the center. The notice must be sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile or by e-mail address **and** regular mail, and must describe the action proposed or taken by a sponsoring organization with regard to a center's participation. The notice is considered received five calendar days after being sent. If the notice is undeliverable, it is considered received five calendar days after being sent to the addressee's last known mailing address, facsimile number, or e-mail address. A copy of the SD notice must also be sent to the Michigan Department of Education (MDE).

The notice must:

- Inform the center that participation in the CACFP has been suspended, that the center has been designated as seriously deficient, and that the sponsor is proposing termination and disqualification.
- Specify the SD(s) found and the center's opportunity to request an administrative review (appeal) of the proposed termination.
- State that participation, including all program payments, will remain suspended until the administrative review is concluded.
- Inform the center that if the administrative review official overturns the PTPD, this also overturns the suspension and the center may claim reimbursement for eligible meals served during the suspension.
- Inform the center that termination of their CACFP agreement will result in the placement of the center and RP/Is on the NDL.
- Inform the center that if they voluntarily terminate their CACFP agreement after receiving the suspension notice, the center will be terminated for cause, disqualified, and all RP/Is will be placed on the NDL.

### **Withdrawal of Proposed Termination and Proposed Disqualification after Center Wins Appeal**

If the center requests an administrative review and the hearing official overturns the sponsor's PTPD actions, the sponsor must issue a Notice of Withdrawal of Proposed

Termination and Proposed Disqualification (after center wins appeal) (Letter G) or Notice of Withdrawal of Suspension, Proposed Termination and Proposed Disqualification: Imminent Threat to Health or Safety (after center wins appeal) (Letter K) to the center. The notice must be sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile or by e-mail address **and** regular mail, and must describe the action proposed or taken by a sponsoring organization with regard to a center's participation. The notice is considered received five calendar days after being sent. If the notice is undeliverable, it is considered received five calendar days after being sent to the addressee's last known mailing address, facsimile number, or e-mail address. A copy of all SD related notices must also be sent to the Michigan Department of Education (MDE).

Even after the Withdrawal of the PTPD, the center must still submit corrective action to correct all SD(s). Letter G and K require the center to submit corrective action to correct all SD(s). If proper corrective action is submitted, the sponsor will send Letter B to temporarily defer the SD(s). If proper corrective action is not submitted, the sponsor will send Letter C, Notice of Proposed Termination and Proposed Disqualification.

### **Termination of the Agreement and Disqualification**

If the center does not submit a timely request for appeal, or if the hearing official upholds the sponsor's proposed actions, the sponsor must immediately terminate the center's agreement to participate in the CACFP and disqualify the center and the RP/Is from future CACFP participation.

If the hearing official upholds the sponsor's proposed actions, the sponsor must issue a Notice of Termination and Disqualification (after sponsor wins appeal) (Letter F) or a Notice of Termination and Disqualification: Imminent Threat to Health and Safety (after sponsor wins appeal) (Letter J) to the center. The date of the termination and disqualification will be the date of the hearing official's decision.

If the center did not request an appeal, the sponsor must issue a Notice of Termination and Disqualification (following failure to appeal) (Letter E) or a Notice of Termination and Disqualification: Imminent Threat to Health and Safety (following failure to appeal) (Letter I) to the center. The notice must be sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile or by e-mail address **and** regular mail, and must describe the action proposed or taken by a sponsoring organization with regard to a center's participation. The notice is considered received five calendar days after being sent. If the notice is undeliverable, it is considered received five calendar days after being sent to the addressee's last known mailing address, facsimile number, or e-mail address. A copy of the SD notice must also be sent to the Michigan Department of Education (MDE).

Upon receipt of the Termination and Disqualification notice, the MDE shall provide the United States Department of Agriculture (USDA) - CACFP, Food and Nutrition Service, Midwest Regional Office, a copy of the notice and add the center and the RP/Is to the NDL.

Once a center is terminated and disqualified, the SD(s) that caused the action are listed on the CACFP Report of Disqualification. Once a center is disqualified and placed on the NDL, the center no longer has an agreement with the sponsor and is not subject to the requirements of the CACFP. Therefore, the center may not be terminated and disqualified multiple times because the center's permanent agreement has already been terminated by the sponsor. Any SD issues subsequent to the original termination do not affect the NDL status.

### **Sponsoring a Center Previously on the NDL**

After a center is removed from the NDL, the center must still submit a CAP to address the SD(s) that caused them to be placed on the NDL. The sponsor must collect a CAP from the center that fully and permanently corrects the previously cited SD(s). The sponsor can then approve the CAP or chose not to. There is no requirement that the sponsor add the center to its application if the sponsor is not comfortable with the center's CAP, but the sponsor must notify the center in writing of the reason why the CAP was not accepted.

The following documents are available on the MDE CACFP website at [Child and Adult Care Food Program Website<sup>1</sup>](#) under Forms & Instructions, Independent Centers and Sponsors of Centers. For questions regarding this memo, contact our office at 517-373-7391.

### **Attachments:**

[Serious Deficiency \(SD\) Flow Chart for Sponsors](#)

[Sample Appeal Procedures](#)

[Sample Request for Administrative Review](#)

Letter A: [Serious Deficiency Notice](#)

Letter B: [Corrective Action Accepted, Temporary Deferral of Serious Deficiency](#)

Letter C: [Notice of Proposed Termination and Proposed Disqualification](#)

Letter D: [Proposed Termination and Disqualification \(Repeat Finding of Serious Deficiency\)](#)

Letter E: [Notice of Termination and Disqualification \(following failure to appeal\)](#)

Letter F: [Notice of Termination and Disqualification \(after Sponsor wins appeal\)](#)

Letter G: [Notice of Temporary Deferral of Serious Deficiency and Rescission of Proposed Termination and Disqualification \(after center wins appeal\)](#)

Letter H: [Notice of Combined Serious Deficiency, Suspension, Proposed Termination, and Proposed Disqualification: Imminent Threat to Health and Safety](#)

Letter I: [Notice of Termination and Disqualification: Imminent Threat to Health and Safety \(following failure to appeal\)](#)

Letter J: [Notice of Termination and Disqualification: Imminent Threat to Health and Safety \(after Sponsor wins appeal\)](#)

Letter K: [Notice of Temporary Deferral of Serious Deficiency, Rescission of Suspension, Proposed Termination and Proposed Disqualification: Imminent Threat to Health or Safety \(after center wins appeal\)](#)

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<sup>1</sup> [www.michigan.gov/cacfp](http://www.michigan.gov/cacfp)